

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT **RECEIVED**  
for the  
DISTRICT OF NEW JERSEY

OCT 31 2022

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

ANGELO RODRIGUEZ*Petitioner*

v.

WARDEN STEVIE KNIGHT*Respondent**(name of warden or authorized person having custody of petitioner)*

Case No. \_\_\_\_\_

*(Supplied by Clerk of Court)*

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

## Personal Information

1. (a) Your full name: Rodriguez Angelo  
(b) Other names you have used: \_\_\_\_\_
2. Place of confinement:  
(a) Name of institution: FCI Fort-Dix  
(b) Address: P.O. Box 2000, Joint Base MDL, NJ 08640  
(c) Your identification number: 80546-053
3. Are you currently being held on orders by:  
☒ Federal authorities      ☐ State authorities      ☐ Other - explain: \_\_\_\_\_
4. Are you currently:  
☐ A pretrial detainee (waiting for trial on criminal charges)  
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: The United States District Court for Eastern District of New York  
(b) Docket number of criminal case: 13-CR-00085  
(c) Date of sentencing: 11/29/2016  
☐ Being held on an immigration charge  
☐ Other (explain): \_\_\_\_\_

## Decision or Action You Are Challenging

5. What are you challenging in this petition:  
☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☒ Other (explain): Ineligibility to earn First Step Act Credit for participating in evidence-based recidivism reduction programing or productive activities because of 18 U.S.C. § 924(c) conviction.

## 6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: Federal Bureau of Prisons (WARDEN), FCI Fortdix P.O. Box 38, Joint Base MDL, NJ 08640
- (b) Docket number, case number, or opinion number: 1109150-F1
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

I requested to be deem eligible to receive Earn Time Credit pursuant to First Step Act (FSA) of 2018. I was denied because I'm serving a sentence for a conviction (18 U.S.C. § 924(c)) which supposedly makes me ineligible to receive time credit.

- (d) Date of the decision or action: 4/12/22

## Your Earlier Challenges of the Decision or Action

## 7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No See Administrative Remedy Time Line attached (Appendix 1).

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: Northeast Regional Office (Regional Director)
- (2) Date of filing: March 3, 2022
- (3) Docket number, case number, or opinion number: \_\_\_\_\_
- (4) Result: Late Response by Regional, Received on May 16, 2022, DENIED.
- (5) Date of result: April 15, 2022
- (6) Issues raised: Requesting my Time Credit for Programing pursuant to the First Step Act of 2018.

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

## 8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes ☐ No See Administrative Remedy Time Line attached (Appendix 1).

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Central Office (General Counsel)(2) Date of filing: May 25, 2022(3) Docket number, case number, or opinion number: 1109150-A2(4) Result: Rejected, Resubmitted, then denied by the Central Office(5) Date of result: Rejected date June 9, 2022, Denial date 10/10/22(6) Issues raised: Requesting to receive Earn Time Credit pursuant to the First Step Act (FSA) of 2018.

(b) If you answered "No," explain why you did not file a second appeal:

## 9. Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal:

## 10. Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: I'm challenging the way my sentence is being carried out.  
The BOP failed to award my Earn Time Credit (ETC) under First Step Act of 2018,  
which is not cognizable under 28 U.S.C. § 2255.

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: \_\_\_\_\_

(b) Date of the removal or reinstatement order: \_\_\_\_\_

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



---

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE: The BOP (Warden Stevie Knight) Abused His Discretion Regarding Denying Petitioner's First Step Act (FSA) Earn Time Credit (ETC) for Programing and Productive Activities. Their Abuse of Discretion Stemmed from Erroneous Interpretation of Statute, Which Resulted in Clear Error of Judgment by the BOP.**

(a) Supporting Facts (Be brief, do not Cite Cases or Law).

Petitioner requested the Bureau of Prison ("BOP") to apply to him the Credit that he has earned through the First Step Act ("FSA") Earn Time Credit ("ETC") for participating in programs and productive activities. His credit calculation would have started from December of 2018, the FSA enactment date. He was given a late denial of such Credit by the Warden at FCI Fortdix, who claim that "[e]ligibility is based on offense history and as reflected in 18 U.S.C. § 3632(d)(4)(D), an inmate cannot earn FTC if he or she is serving a sentence for a disqualifying offense...[b]ased on a review of your records you are serving a sentence for [such conviction which is 18 U.S.C. § 924(c) offense.]"

Pursuant to 18 U.S.C. § 3632(d)(4)(D)(XXii), Congress only intended that individuals who were convicted of 924(c) offenses "relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime" to be ineligible. Congress never intended for individuals whose 924(c) conviction was based off of them possessing a firearm in furtherance of a drug trafficking crime to be swept under the "in relation to" section of the 924(c) statute. If this was the case Congress would have stated in 18 U.S.C. § 3632(d)(4)(D)(XXii) "who, in furtherance of any such crime," instead of "during and in relation to" standing alone, picked from a divisible statute or a statute with different ways to commit the crime.

This would mean that when Congress only utilized one section ("in relation to") of the 18 U.S.C. § 924(c) statute, it intended for Bureau of Prison to do its own independant investigation to determine, would the act and evidence in the defendant's case suffice to sustain a conviction under the "in relation to" prong of 924(c). Or does the evidence only support the in furtherance prong, then leaving the defendant to be eligible for ETC. See attached to this Petition for a Writ of Habeas Courpus, an Exhaustion of Remedies Time-line, that confirm Petitioner fully exhausted his Administrative Remedies. Furthermore, for more details and supporting law please see attached Memorandum in Support of 28 U.S.C. § 2241, also Motion to Consolidate Different Actions with Same Issue/Argument.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

---

---

---

Request for Relief

15. State exactly what you want the court to do: I'm requesting this Court to order the Bureau of  
Prison to apply First Step Act ("FSA") Earn Time Credit ("ETC") towards the remainder of  
my sentence.

---

---

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

10/27/22

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

10/27/2022

  
Signature of Petitioner

Signature of Attorney or other authorized person, if any